Filed 3/18/19 Marriage of Moca CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of HRISTOS MOCA v. LINDA MOCA	B275299 c/w B276393 (Los Angeles County Super. Ct. No. GD019611)
HRISTOS MOCA, Appellant, v. LINDA MOCA, Respondent.	

APPEAL from orders of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Hristos Moca, in pro. per., for Appellant.

Mark J. Warfel for Respondent.

Ten years after his divorce from respondent Linda Moca became final, appellant Hristos Moca filed a series of requests for orders vacating or stopping enforcement of the dissolution judgment. He also sought attorney fees and sanctions against respondent. In connection with his requests for orders, appellant filed several requests for disability accommodation pursuant to California Rules of Court, rule 1.100 (Rule 1.100). The trial court granted appellant several accommodations, but did not provide the specific accommodation he sought: a court-appointed psychologist or neuropsychiatrist. The court also denied his requests for orders, attorney fees, and sanctions. Appellant challenges both the court's handling of his accommodation requests and its denial of his requests for orders. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Appellant and respondent wed in November 1988. They had two children, both of whom are now adults. The parties legally separated in January 1997, and appellant filed a petition to dissolve the marriage in April 1997. Appellant was convicted of felony spousal abuse in August 1997. Respondent obtained a temporary restraining order against him around the same time.

In April 1998, the trial court issued pendente lite support orders, retroactive to May 1, 1997, directing appellant to pay $11,375 per month in spousal and child support to respondent, who was a stay-at-home parent during the marriage.[1] The court

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[1]Respondent filed a voluntary bankruptcy petition in late April 1998. The bankruptcy court ultimately denied discharge of at least some of her debts after finding that she "intentionally misrepresented the true nature of her assets and liabilities in her papers filed with this court with the specific intent to conceal those assets for her benefit." The bankruptcy court also denied appellant's motion for relief from the automatic stay "to permit

found that appellant, who at the time of the dissolution bought and resold distressed real properties, had "the ability to earn over $300,000 [in 1997] despite setbacks from the criminal trial in which he was convicted of felony spousal abuse" and had engaged in a "scheme . . . for the purpose of helping him conceal his true income and income earning capacity, and to withhold access to funds in which the community may have a legitimate interest."

Appellant underwent a lumbar discectomy that he characterizes as a "catastrophic back surgery" in May 2000. Appellant was awarded Social Security disability insurance benefits on June 18, 2001; the Social Security Administration found that he became disabled on January 15, 2000 and was entitled to benefits as of July 2000. Appellant's support obligations continued to accrue, however, and his arrearage reached approximately $1 million before he successfully obtained modification of child support and termination of spousal support in June 2004.[2] The trial court denied appellant's request to make the modification retroactive.

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the state court to resolve the marital status, custody, visitation, and support issues without further delay." Citing 11 U.S.C. section 362(b)(2) and *In re Willard* (Bankr. 9th Cir. 1990) 15 B.R. 898, the bankruptcy court concluded that "the automatic stay does NOT apply to these issues by the state court" and denied appellant's motion as moot in June 1999. The bankruptcy court later explained to appellant at a March 2007 hearing that the automatic stay lifted when the court denied discharge of respondent's debts in November 1999 and therefore was not in effect at the time of the January 4, 2005 dissolution judgment.

[2]Appellant obtained modification of the obligations in the trial court at an earlier time, but we reversed the order for failure of proof of changed circumstances. (*Moca v. Superior Court of Los Angeles County* (Sept. 20, 2001, B148950 & B148951) [nonpub. opn.].)

The court entered final judgment in the dissolution on January 4, 2005. That judgment awarded respondent sole permanent legal and physical custody of the children and ordered appellant to pay $119 per month for their support. It also divided the parties' community property; notably, appellant received the parties' business, Moca Commercial Group, "valued at zero dollars," and respondent received the family residence. The court found that neither party had the ability to pay the other's attorney fees and therefore ordered them each to bear their own fees and costs. It also found that an award of fees to appellant would be unreasonable because his failure to pay support and litigation tactics generated much of the costs.

Neither party appealed the January 4, 2005 judgment. Extensive litigation related to the dissolution nevertheless continued, largely at appellant's behest. Appellant proceeded in propria persona.

In March 2005, the trial court granted appellant's motion for judgment on the pleadings in a joinder complaint respondent previously filed against him. We reversed that ruling in an unpublished opinion in April 2006. (*In re Marriage of Moca* (Apr. 3, 2006, B181359) [nonpub. opn.]) In June 2005, March 2008, and July 2010, respondent requested and the court granted extensions of her restraining order against appellant. The court issued a permanent restraining order in April 2012. That order, like the 2010 order that preceded it, required appellant to serve all legal papers on respondent's attorney.

In June 2009, appellant filed an ex parte request for an order preventing the Internal Revenue Service and Los Angeles County Child Support Services from levying his disability benefits. The court denied the request.

In February 2010, for reasons unclear from the record, the parties stipulated to modify appellant's child support obligation

to $120 per month, "effective forthwith." That same month, appellant moved to set aside the 2005 divorce judgment due to fraud, "on the grounds that [he] was kept in ignorance of the proceedings or otherwise fraudulently prevented from participating in the proceedings, based on Family Code, section 2122(a), with regard to support arrears." The trial court found that appellant "was aware of the facts that underlie the motion more than one year prior to it being filed" and denied it as untimely. Appellant challenged this and other rulings on appeal; we affirmed. (See *Moca v. Moca* (Apr. 25, 2011, B224252) [nonpub. opn.].)

In June 2010, appellant filed an order to show cause for attorney fees at respondent's expense to enable him "to prosecute the divorce action." He also sought respondent's compliance with a June 2009 request he made for an income and expense statement and her tax returns from 1996-2008, and a restraining order barring Los Angeles County Child Support Services from levying his disability benefits. The court denied the requests in July 2010. In September 2010, appellant filed a second, similar order to show cause, requesting that the court terminate child support, stop levy of his benefits, and order respondent to pay $25,000 in attorney fees. The court denied the order on December 15, 2010. In its ruling, it stated, "[i]t is inappropriate for a party who has failed to pay more than $1.8 million in child and spousal support to request that the other party pay attorneys' fees." The court further noted that within the past year, appellant had filed "three ex parte applications, and three motions, all of which were without merit and denied," such that "awarding him attorneys' fees would serve no good purpose."

In 2012, appellant shifted the litigation to bankruptcy court, where he filed a motion to reopen adversary proceedings he had settled in respondent's bankruptcy case in 2007. He alleged

that respondent engaged in improper transfers with Moca Commercial group in 1995, and that he had first learned about the transfers in July 2010. The bankruptcy court denied the motion in March 2012 as time-barred. The bankruptcy court heard and denied as time-barred a second motion to reopen in January 2013; in that motion, appellant claimed to have newly discovered evidence that respondent concealed from creditors "her interest in her family trust, the prepetition rental from the properties and the cash on hand at the time of the filing of the petition." The bankruptcy court also rejected appellant's contention that the January 4, 2005 dissolution judgment was entered in violation of the automatic stay.

In May 2013, appellant returned to state court and served a subpoena duces tecum on respondent's bank in an effort to obtain an "income determination of [respondent] in the above divorce proceedings." He inaccurately asserted in that document that there was a pending motion "to modify judgment for support and maintenance in the divorce proceedings" and requested that the documents be sent to his home address. The bank advised respondent of the subpoena, and her counsel sent appellant a strongly worded letter demanding that he withdraw it. Appellant complied with the demand. However, he made another request that respondent produce an income and expense declaration in July 2013. Respondent's attorney responded with an even more strongly worded letter. It appears that appellant dropped the matter; the docket reflects no substantive filings between May 2013 and December 2014.[3]

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[3]Appellant asserts in the introduction to his opening brief that he "filed" a request for accommodation on October 3, 2014. He makes the same claim in his reply brief, and adds, "The court did not respond to [appellant's] request for accommodations dated

On December 30, 2014, appellant filed an ex parte application to compel respondent to file an income and expense declaration. He further requested that the court modify the 2010 restraining order to allow him to serve process on respondent rather than her attorney, order Child Support Services to remove his support arrearages from collections, and "order stop enforcement of judgment dated 1-4-2005." In his accompanying declaration, appellant claimed, as he did in the bankruptcy court, that respondent concealed her interest in a family trust that provided her with "unlimited access to funds." He requested that the court sanction respondent for failing to provide him with tax return information and order her "to provide transportation for all future court proceedings since my ex-wife is a multimillionaire and I am disabled and have no money to pay for transportation."

In conjunction with the December 30, 2014 filing, appellant

October 3, 2014." The record contains a request dated October 3, 2014 that is separately stamped both "RECEIVED" and "FILED" on October 3, 2014, but the "FILED" stamp is crossed out. It is unclear whether the judge presiding over the matter received or responded to the request, which was stamped by the clerk's office of a different courthouse. Appellant states—and the request reflects—that he directed it to the presiding judge of the family law court at the downtown courthouse rather than the judge presiding over the matter at the Van Nuys courthouse. The docket indicates the court *granted* a request for accommodation on October 14, 2014, although the entry says the request was made "By RESP," respondent, rather than appellant. The relief appellant requested in this filing was substantively identical to that requested in the December 30, 2014 filing discussed below. There is no indication that appellant sought writ relief pursuant to Rule 1.100(g)(2) or informed the court hearing the case that he made the filing.

filed a request for disability accommodation.[4] Appellant did not specify his disability or medical condition but requested that the court "[a]ppoint a court psychologist to help me remember during court proceedings for all future hearings." He also requested that the court allow him to record the hearing "for [his] personal notes"; permit him to file all future pleadings in a particular court department; "[s]top enforcement and collection of the divorce decree dated 1-5-2004 [*sic*]" due to his unspecified disability; order respondent, "who is a millionaire," to provide him with transportation at her expense for all future hearings; and order hearing dates for requests for orders that appellant planned to file. The court denied all but the filing location and hearing-setting requests pursuant to Rule 1.100(f)(1), which permits the court to deny accommodation when an applicant fails

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[4]Pursuant to Rule 1.100(c)(4), "The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation." This rule applies when rulings regarding requests are being reviewed. (Rule 1.100(g)(3).) However, "[w]hen a party raises [his or] her physical condition as an issue in a case, [he or] she waives the right to claim that the relevant medical records are privileged." (*Vesco v. Superior Court* (2013) 221 Cal.App.4th 275, 279.) Indeed, appellant included all of his requests, the court's responses, and various medical information in his unredacted appendix and briefing. We limit our discussion of this information to that necessary for resolving the appeal.

to satisfy the requirements of Rule 1.100. The court found that appellant had violated Rule 1.100(c)(2), which requires a person seeking accommodation to provide the court with "a statement of the medical condition that necessitates the accommodation." The court also noted that the requests for transportation and stopping enforcement of the 2005 judgment were requests for substantive rulings that could not be granted without affording due process to respondent.

Appellant subsequently filed the substantive motions and requests for accommodation at issue in this appeal. On January 12, 2015, he filed a request for $10,000 in attorney fees to retain counsel to represent him in connection with his forthcoming request for order to set aside the dissolution judgment based on undue influence. Appellant asserted that respondent "concealed her earning ability throughout the proceedings of this case, and her monthly income in excess of $50000 from [her family trust] and concealed her $531,950.00 from community funds and has been self-employed for the last 28 years." He also reiterated his 2010 claim that respondent obtained the January 4, 2005 judgment "by fraud" and listed various alleged acts of concealment, embezzlement, and other wrongdoing.

Around the same time, on January 14, 2015, appellant filed a request for an order to "stop enforcement of divorce 1-4-2005." On the form request for order, he asked the court to "vacate the divorce judgment 1-4-2005 to based extrensic [*sic*] fraud." Appellant also checked the box for "Other Relief" and made the following request: "Vacate and Modify order dated 7-15-2010 [the restraining order] Issue a stay order of divorce Judgment dated 1-4-2005. Order full discovery to allow Hristos Moca to evaluate the community assets concealed by Linda J. Moca."

Appellant captioned his accompanying declaration "Petitioner's Request to Vacate Judgment Dated 1-4-2005 Based

on Undue Influence. Memorandum of Points and Authorities. Declaration of Petitioner Hristos Moca. Request for Judicial Notice. Request for Sanctions Pursuant to Fam. Code 271 Against Linda J. Moca and [her counsel]." In it, he asserted that respondent and her counsel "took unfair advantage" of his "necessities and distress." He further asserted that he discovered on January 14, 2012 "new concealed evidence about the embezzlement" of $61,0000 in 1997, "concealment of community cash funds in the amount of $100,000 and the concealment of $50,000 of rents from the community properties in anticipation of her preconceived divorce proceedings," and evidence of several smaller incidents of embezzlement that occurred in 1995. Appellant also asserted that he discovered the existence of respondent's family trust on August 3, 2012, and further alleged that he was "aggrieved with respect to the 50% partnership interest of Moca Commercial Group Inc." in an amount of $2 million. He alleged that these facts were "so significant that [they] destroyed the overall property division in the final decree dated 1-4-2005." He further argued that these demonstrated that the January 4, 2005 judgment was "obtained through extrensic [*sic*] fraud, concealment and undue influence upon the court and me," and was inequitable as to the division of property and support orders. He asked the court to vacate the divorce judgment, issue a restitution order against respondent in the amount of $531,950.00, sanction respondent and her attorney under Family Code section 271 in the amount of $750,0000, and grant any other relief it deemed proper.

On January 14, 2015, appellant filed two related requests for disability accommodation. Without identifying his disability or medical condition, he requested that the court continue the scheduled hearings on his substantive motions from February 5, 2015, a date he previously selected, to specific future dates and

times. The court denied the requests pursuant to Rule 1.100(f); it again noted that appellant failed to provide a statement of impairment. It further noted that the requests were substantive requests for continuances, and that the court could not honor them in any event because it was dark on one of the specified dates and had a trial scheduled on the other. The court proposed alternatives for appellant, namely that he appear on February 5 and request a continuance for setting a hearing date, or seek a stipulation for continuance from respondent.

On January 30, 2015, appellant submitted another request for disability accommodation. It is stamped "RECEIVED" but not filed. In it, appellant asserted that he is "permanently disabled due to a catastrophic back surgery in May of 2000" and suffers from gross motor limitations and "chronically and excruciating pain." He further asserted that he suffered from "permanent insomnia," chronic fatigue, and "memory deficits . . . due to heavy use of pain medication." He requested that the court reschedule his February 2015 hearings to March 12, 2015 and April 24, 2015, allow him to record all future court proceedings, and "appoint a court neuropsychiatrist to help me remember the court proceedings for all future hearings." He further requested extra time to be heard, and informed the court that fluorescent light is "almost blinding" to him.

The court responded to the request in a closed hearing on February 5, 2015. It granted appellant's request to bifurcate the attorney fee and substantive requests. It also granted him permission to take extra time and extra breaks and to record the court proceedings, but denied his request for the neuropsychiatrist "without some kind of an actual neurological diagnosis" or "anything medical to support that." It recommended he bring a friend to the proceedings to assist him and explained that it could not order respondent to pay for a

neuropsychiatrist because of the confidential nature of the proceedings. The court also granted appellant's request for a continuance and set the attorney fee motion for hearing on April 24, 2015, and the substantive requests to vacate the judgment, grant restitution, and award sanctions for hearing on July 6, 2015. Respondent filed a single opposition to appellant's requests.

On April 1, 2015, appellant filed an ex parte application requesting that the court issue a subpoena to respondent's bank. At the hearing on that request, the court told him that was not an emergency warranting ex parte relief and said it would take up the matter at the April 24, 2015 hearing.

At the April 24 hearing on appellant's request for attorney fees, appellant indicated that he had attempted to file a request for accommodation on April 16 but was unable to do so. The record nonetheless contains this request; it is stamped "RECEIVED April 16 2015." Appellant again requested "a court psychologist to help me remember during court proceedings for all future hearings," and attached a note from an orthopedic surgeon dated January 9, 2015. In the note, the physician stated that appellant suffered from chronic neck and back pain and arm pain and numbness. The physician further stated, "Due to long term use of meds he has memory loss & forgets things." The record does not contain the written response the court told appellant it sent him on April 22, 2015.

The court closed the courtroom and allowed appellant to reassert his request orally. Appellant indicated that he had requested a psychologist, and the court stated that it had "included in my ruling what your doctor said about you having memory problems based on the length of use of your medication. But there is no additional information that would cause the court to determine that a court psychologist is necessary to help you

remember things. I don't even know what abilities a psychologist would have to assist you during the hearing, which is what you asked for." The court advised appellant that it was willing to revisit the request if appellant could demonstrate "there is someone with some specific training and experience that you can establish would be able to make a difference."

The court reopened the courtroom and heard the parties' arguments on appellant's attorney fee request. At the conclusion of the hearing, the court denied appellant's request. It explained that a different judge had ruled on appellant's similar request in December 2010, "[a]nd the court is going to make the finding that the findings and orders that were issued by Judge Meisinger at that time remain unchanged and thus are res judicata and there's been no change and the court is relying on the findings that were made in that findings and order after hearing. And the request for attorney fees is hereby denied." After appellant objected to the ruling, the court reiterated, "I'm making the finding that there's been no change in circumstances since that order was made and that you haven't met your burden of proof to establish that change." The court memorialized its ruling in an April 24, 2015 minute order. Respondent's counsel served notice of ruling on April 28, 2015.

On June 24, 2015, in advance of the hearing on appellant's substantive requests scheduled for July 6, 2015, appellant filed another request for accommodation. He again requested appointment of a court psychologist "to help me remember during court proceedings for all future hearings," and further requested that the court order the clerk to mail all orders to him. The court denied the request for a psychologist "because it fails to satisfy the requirements of CRC 1.100 and the requested accommodation would create an undue financial or administrative burden on the court." The court acknowledged appellant's previous submission

of a "document dated January 9, 2015" written by appellant's doctor that stated "Due to long term use of meds he has memory loss & forgets things," but reiterated that it was unable to "determine why or how a court appointed psychologist is necessary to 'help' remember during court proceedings." The court granted in part and denied in part appellant's request to have all orders mailed to him.

The hearing scheduled for July 6, 2015 was continued to November 16, 2015. Appellant filed a request for accommodation on November 6, 2015, in which he again requested the appointment of "a court psychologist to help me remember during court proceedings for all future hearings." The trial court (a different judge) denied the request for a psychologist but granted three alternative accommodations: "(1) You may bring a support person to take notes[.] (2) You may ask for the court reporter to read back the record. (3) You may bring in your own doctor to consult on breaks during the hearings."

At the November 16, 2015 hearing, appellant indicated that he had not received the court's response. The court provided him with a copy and allowed appellant to orally respond at a closed hearing. Appellant told the court, "This is not a grant at all, your honor. The same issues have been discussed with the previous judge. I don't have anyone to help me. I don't have any money to pay for any doctors. . . . They won't come here if I can't pay for them. And by doing this, well, I asked to appoint a psychologist at the court expense, at the county expense, to help me remember and communicate throughout the hearings. And I don't think that that is fair. It is not a fair play in terms of being able to argue with [respondent's attorney] who's had 30 years' experience in this. So I'm asking the court to reconsider the A.D.A. request." The court told appellant it could not overrule orders made by other judges. It also reminded appellant that it had ruled that he

could "have somebody here with you who can take notes, repeat the notes back to you, take breaks, go over the notes, help remind you of things, help you remember things. You also have the ability to have the court reporter read things back to you. And you have your own tape recording that you can listen to. There is no time restriction on your ability to do these things. And so we have the time available if you need to take the time to review notes, consult with someone, have testimony read back to you, or argument read back to you, and listen to your tape recordings. But under the circumstances, I'm denying your request."

The court held the hearing on appellant's substantive requests on November 16 and December 23, 2015. The court took the matter under submission and issued a final statement of decision on April 18, 2016. As to the request for attorney fees, which it previously denied on April 24, 2015, the court, citing the disentitlement doctrine, found that appellant "has tried and failed in multiple attempts since entry of Judgment in 2005 to set aside the judgment or otherwise relieve himself of the obligations imposed on him by the judgment and other court orders. The arguments raised by [appellant] here have been heard and considered by this court and the Bankruptcy Court and the Court of Appeal in various forms but in the same substance, many times over, going back many years. Forcing [respondent] to pay [appellant's] attorney fees under these circumstances would reward [appellant's] repeated, failed attempts to have the obligations set aside." The court further found that appellant's arguments "involve factual disputes which were raised in discovery proceedings in this case in 1997 and 1998, all of which predate the judgment," and reiterated that it was adopting the reasoning of the December 15, 2010 order denying attorney fees.

The court also denied appellant's requests to "stop enforcement of the divorce" based on undue influence,

concealment, and embezzlement that he discovered long after the judgment was entered. The court found that "[i]t is clear to this court that [appellant] has known since prior to 2012 the bases for all of the relief requested here and, in fact, has previously requested—and been denied—this same relief in this court," and in the court of appeal in its April 2011 decision. The court further found that appellant had notice of respondent's bankruptcy and disclosures she made therein, offered no explanation for his alleged 2014 discovery of documents provided to him in 1997, and had a copy of respondent's family trust as early as 2004, "long before trial." In short, the court ruled, appellant "has raised the same grounds for setting aside the judgment, vacating the default and modifying orders over and over again. There is no basis for the court to 'stop enforcement of divorce' and vacate the judgment. Accordingly, the request in its entirety is DENIED." The court granted several requests for judicial notice that appellant made during the course of the proceedings, but denied his request to reopen discovery: "The court finds that [appellant's] requests for orders were made in bad faith and without any reasonable bases and were solely intended to cause under [*sic*] burden and harassment on the Respondent. [Appellant's] testimony about the delay in discovering facts was not credible and grossly misrepresents the evidence in this case. The request to reopen discovery is DENIED."

Four days later, on April 22, 2016, appellant filed a motion for new trial. He argued that newly discovered evidence—documents he found in 2010 while cleaning his fiancee's mother's bedroom—was material to his case and warranted a new trial. He further argued that a new trial was necessary because respondent concealed and failed to produce crucial documents. Respondent opposed the motion, which she characterized as a

motion for reconsideration.

Prior to the May 18, 2016 hearing on the motion for new trial, appellant filed a request for accommodation in which he sought appointment of "a court psychologist to help me remember during court proceedings for all future hearings." He also requested frequent breaks and dimming of the court lights. The court granted the requests in part and granted alternative accommodations as follows: "(1) Court will allow any breaks as requested. (2) Court will dim lights. (3) Court will allow tape recording of the proceedings to allow Mr. Moca to review during the hearing. (4) Court will allow Mr. Moca to bring in his own physician or psychologist or support person at his own expense. (5) If needed, Court will assist in helping Mr. Moca into the courtroom & assist in helping him locate papers in his possession."

On May 18, 2016, the court issued a minute order indicating that it heard the motion for new trial as scheduled; no transcript of the hearing is in the record. The court denied the motion.

Appellant filed two notices of appeal: one challenging the court's May 18, 2016 ruling on his request for accommodation, and one challenging the court's resolution of the substantive matters and denial of his motion for new trial.[5] We consolidated

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[5]"'Generally, no order or judgment in a civil action is appealable unless it is embraced within the list of appealable orders provided by statute.' [Citation.] With certain exceptions not pertinent here, appealable judgments and orders are listed in Code of Civil Procedure section 904.1" (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19.) The court's order denying appellant's substantive requests is appealable as an "order made after a judgment made appealable by paragraph (1)" of Code of Civil Procedure section

the appeals for all purposes.

DISCUSSION

I. Accommodation Requests

Appellant contends that the court's refusal to appoint a psychologist or neuropsychiatrist denied him fair access to the court and proceedings. He argues that the court lacked a basis for denying his repeated requests for a psychologist or neuropsychiatrist under Rule 1.100(f) because they were "made timely and proper," would not cause an undue financial or administrative burden on the court, and would not fundamentally alter the nature of the court's service, program, or activity. He further argues that the denial of the request constitutes structural error and therefore "requires that the final statement of decision dated May 18, 2016 [presumably the order denying his motion for new trial] and the orders of April 1, 2015 [denying ex parte relief] and April 24, 2015 [denying attorney fees] be vacated and any retrial must be of the entire matter granted from the outset." We disagree.

"It is the policy of the courts of this state to ensure that

904.1, subdivision (a). (Code Civ. Proc., § 904.1, subd. (a)(2)). The order denying the motion for new trial is not directly appealable—Code of Civil Procedure section 904.1, subdivision (a)(4) authorizes appeals only from "an order *granting* a new trial"—but is subject to review on appeal from the underlying judgment. (*Walker*, *supra*, 35 Cal.4th at p. 18.) The orders on appellant's requests for accommodation are not appealable. They may be directly challenged by writ (see Rule 1.100(g)(2)) but are not among the orders listed in Code of Civil Procedure section 904.1. Courts do review the orders in connection with appealable orders, however. (See, e.g., *In re Marriage of James M. C. and Christine J. C.* (2008) 158 Cal.App.4th 1261, 1272-1278; *Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 707-711 (*Biscaro*).)

persons with disabilities have equal and full access to the judicial system." (Rule 1.100(b).) This policy is advanced by providing upon request "accommodations," which are defined as "actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons who are deaf or hard-of-hearing; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation." (Rule 1.100(a)(3).)

Rule 1.100 sets forth mandatory procedures both for persons requesting accommodations in Rule 1.100(c) and for the court in ruling upon them in Rule 1.00(e) and (f).

As is relevant here, Rule 1.100(c) provides that requests may be made orally or in writing, "as far in advance as possible," but no fewer than five court days before the requested implementation date. (Rule 1.100(c)(1), (3).) "Requests for accommodations must include a description of the accommodation sought, along with a statement of the medical condition that necessitates the accommodation. *The court, in its discretion, may require the applicant to provide additional information about the medical condition*." (Rule 1.100(c)(2) (emphasis added).) The court also has discretion to waive the timeliness requirement. (Rule 1.100(c)(3).)

Once a request has been filed, the court "must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws." (Rule 1.100(e)(1).) "The court must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing. On request of the applicant, the court may also provide an additional response in an alternative format. The response to the applicant must indicate: (A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted; (B) If the request for accommodation is denied, in whole or in part, the reason therefor; (C) The nature of any accommodation to be provided; (D) The duration of any accommodation to be provided; and (E) If the response is in writing, the date the response was delivered in person or sent to the applicant." (Rule 1.100(e)(2).)

"A request for accommodation may be denied only when the court determines that: (1) The applicant has failed to satisfy the requirements of this rule; (2) The requested accommodation would create an undue financial or administrative burden on the court; or (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity." (Rule 1.100(f).) A court may deny a properly stated request for these reasons only. (*Biscaro*, *supra*, 181 Cal.App.4th at p. 709.)

It is unclear from appellant's filings which of the responses to his requests he challenges. His civil case information

statement identifies only the May 18, 2016[6] request and response, but he mentions requests made "May 12, 2016; July 6, 2015; June 24, 2015; April 16, 2015; February 5, 2015; October 3, 2014; December 30, 2014" in his briefing. In his opening brief, appellant appears to make an argument about the October 3, 2014 request, though he does not state the date of the filing he is discussing or provide a proper record citation to the document. He more clearly states in his reply brief, though without citation, "The court did not respond to [appellant's] request for accommodations dated October 3, 2014. The court erred in denying [appellant's] requests by person with disability [*sic*]." We will examine each request appellant identified that is also included in the record. [7]

The October 3, 2014 request was not made in conjunction with any of the substantive orders properly before this court. To the extent appellant nevertheless may or is challenging the court's possible failure to rule on that request, we find any error harmless. In *Biscaro*, *supra*, 181 Cal.App.4th at p. 708, the court

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[6]Appellant refers to this request as the "May 12, 2016" request, apparently because that is the date he prepared and dated it. The filing stamp on the document indicates it was filed on May 18, 2016.

[7]The record indicates that the court held a telephonic scheduling hearing with the parties on July 6, 2015, and invited appellant to "have a reported discussion . . . based on the pleadings filed June 24, 2015," the June 24, 2015 request for accommodation, during that conversation. The appellate record contains neither a transcript of that call, during which appellant may have made an oral request for accommodation, nor a written request for accommodation prepared or filed on July 6, 2015. We accordingly do not consider any request appellant may have made on July 6, 2015.

of appeal concluded that a claim that the trial court failed to respond to a request for accommodation was not subject to the general rule that a silent record gives rise to a presumption of regularity. It explained that Rule 1.100(e) explicitly requires the court to respond to requests for accommodation, and reasoned that allowing the tacit denial of requests through silence would undermine the policy of acknowledging and addressing disabilities of people who use the justice system. (*Biscaro*, *supra*, 181 Cal.App.4th at p. 708.) The court nevertheless concluded that a failure to rule may be considered harmless "if the record before us led us to conclude that appellant had failed to satisfy the requirements of the rule and that his accommodation should have been denied as a matter of law." (*Ibid.*)

Here, the salient request in the October 3, 2014 document was appellant's request for "a court psychologist to help me remember during court proceedings for all future hearings." Appellant identified his "Impairment necessitating accommodation" as "Disabled due to back surgery." On the face of the filing, which was not accompanied by any additional documentation or previous requests that could shed light on the nature of the request, there is no nexus between appellant's claimed impairment, "Disabled due to back surgery," and the request for a psychologist to help him remember. As a matter of law, appellant did not satisfy the requirements of Rule 1.100(c)(2), which requires an applicant to provide a "statement of the medical condition that necessitates the accommodation." Without more, "back surgery" does not clearly necessitate the assistance of a psychologist. If the court did fail to rule on the request, its omission accordingly was harmless. Moreover, appellant failed to bring any oversight to the court's attention,

either by seeking writ review as provided in Rule 1.100(g)(2) or by notifying the court of any omission in connection with his subsequent requests for accommodation. Instead, he simply refiled a virtually identical request (this time in the courthouse where the case was pending) and received a timely response.

All of appellant's subsequent requests for a psychologist or neuropsychiatrist properly were denied. The court denied appellant's December 30, 2014 request for a psychologist pursuant to Rule 1.100(f)(1) due to appellant's failure to include a statement of the medical condition necessitating accommodation as required by Rule 1.100(c)(2). The court requested more information about appellant's medical condition in connection with the January 30, 2015 request, which it had discretion to do under Rule 1.100(c)(2). Appellant also overlooks the court's grant of the alternative accommodation that *appellant proposed* to ameliorate the same claimed impairment of "memory deficits," permission to record the proceedings.

In connection with the April 16, 2015 request, the court again acted well within its discretion under Rule 1.100(c)(2) by requesting more information about appellant's medical condition to ensure that a psychologist would be an appropriate accommodation. The court's conclusion that the note from appellant's orthopedic surgeon was insufficient was a reasonable one; the note mentioned memory loss but was not from a mental health professional and did not explain how such a professional was necessary to assist appellant with remembering court proceedings in light of the previous accommodation the court granted. The court properly denied the June 24, 2015 request on the ground that appellant failed to comply with Rule 1.100(c)(2); the June 24, 2015 filing did not identify appellant's impairment,

and the court again appropriately informed appellant that further documentation would be necessary. The court provided appellant with three alternative accommodations in connection with his November 6, 2015 request, which also failed to identify his impairment. The court provided additional alternative accommodations in its May 18, 2016 order. The record indicates that appellant utilized these accommodations and actively participated in the proceedings. The court's refusal to furnish a psychologist or neuropsychiatrist was not reversible error.

II. Substantive Rulings

The court denied appellant's requests for attorney fees, sanctions and restitution, and a set aside or "stop enforcement" of the January 4, 2005 judgment. It also denied the motion for new trial he filed after it issued its final decision on those matters. We consider each of the court's rulings in turn.

A. Attorney Fees

Family Code section 2030 authorizes the court to award need-based attorney fees and costs to "ensure that each party has access to legal representation . . . to preserve each party's rights" in a proceeding for dissolution of marriage "and in any proceeding subsequent to entry of a related judgment." (Fam. Code, § 2030, subd. (a)(1).)[8] In determining whether to order one party to pay another party's fees and costs and in what amount, the court "shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." (§ 2030, subd. (a)(2).) Fee awards must be "just and reasonable

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[8]All further statutory references are to the Family Code unless otherwise indicated.

under the relative circumstances of the respective parties." (§ 2032, subd. (a).) "Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances." (§ 2032, subd. (b).)

We review the court's award of attorney fees for abuse of discretion. The order "'will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made.' [Citation.]" (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532.)

Here, the trial court denied appellant's request for attorney fees primarily for the equitable reason that "[f]orcing [respondent] to pay [appellant's] attorney fees under these circumstances would reward [appellant's] repeated, failed attempts to have the obligations set aside." This was not an abuse of discretion. The instant dissolution proceedings have been ongoing for nearly 22 years, largely due to appellant's repeated attacks on a judgment that became final more than a decade ago. The court reasonably concluded that requiring respondent to fund this continuing litigation would be inequitable, particularly in light of appellant's significant support arrearage.

Appellant argues that the court erred in invoking the equitable doctrine of disentitlement, because he presented overwhelming evidence of "outrageously horrible" conduct by respondent and her attorney, and because he did not intentionally avoid his support obligations. We are not persuaded. Although the court may have misused the term—disentitlement is an equitable doctrine that "enables an appellate court to stay or dismiss the appeal of a party who has refused to

obey the superior court's legal orders" (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 459)—it did not err in applying a similar equitable concept here. Essentially, "[t]he disentitlement doctrine prevents a party from seeking assistance from the court while that party is in 'an attitude of contempt to legal orders and processes of the courts of this state.' [Citation.]" (*Ibid.*) Appellant repeatedly has ignored final rulings of the trial court and the bankruptcy court that have rejected his claims, including his prior requests for attorney fees. Appellant did not pay child or spousal support even prior to his disability onset, during a period when the trial court found that he was engaging in a scheme to conceal his true earnings potential. It was not an abuse of discretion (or demonstrative of bias, as appellant also suggests) to conclude on this record that it would be inequitable to award appellant attorney fees to enable continued litigation.

B. Sanctions and Restitution

The trial court denied appellant's request to sanction respondent in the amount of $750,000 and his assertion that respondent should be ordered pay him $531,950 in restitution. We do not find error in these rulings.

Section 271 is a provision that enables the court to award attorney fees and costs based "on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation." (§ 271, subd. (a).) "An award of attorney's fees and costs pursuant to this section is in the nature of a sanction." (*Ibid.*) "In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the

sanction is imposed." (*Ibid.*) We review a sanctions order under section 271 for abuse of discretion. (*In re Marriage of Smith*, *supra*, 242 Cal.App.4th at p. 532.)

Appellant argues that the court should have ordered sanctions of $750,000 against respondent because she breached various fiduciary duties to him during the early stages of the dissolution proceedings. The court acted within its discretion by not issuing such an order. First, despite appellant's repeated assertions that respondent is a "millionaire," there is no evidence in the record to support this contention.[9] The court reasonably could have concluded that sanctions in the amount of $750,000 would impose an unreasonable financial burden on her. Second, the court is required to consider "all evidence concerning the parties' incomes, assets, and liabilities," and that evidence shows that appellant has sizeable liabilities to respondent, even if the arrearages accrued after the onset of his disability are removed from the calculus. Third, and most importantly, it is patently evident from the record and history of this case that appellant's conduct in continually litigating a case in which final judgment was entered nearly 14 years ago is "frustrat[ing] the policy of the law to promote settlement of litigation." The requested sanctions are not warranted under the circumstances of this case.

Restitution also is an equitable remedy. It is aimed at prohibiting unjust enrichment. "'[O]ne person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution for property or benefits received, retained, or appropriated, where it is just and

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[9]We recognize that appellant also contends that respondent has obstructed his attempts to obtain information about her financial position.

equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly.' [Citation.]" (*Gardiner Solder Co. v. Supalloy Corp., Inc.* (1991) 232 Cal.App.3d 1537, 1542.) "The exercise of discretion for an equitable determination is reviewed under an abuse of discretion standard." (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47.)

Here, appellant contends that respondent concealed various income and assets from him, obstructed his efforts to discover those interests, thereby unjustly enriching herself in the amount of $531,950.00. The trial court expressly rejected appellant's assertions that he discovered all of the misbehavior, which allegedly occurred primarily in the mid-1990s, long after the divorce became final. It specifically found that his "testimony [in] the delay in discovering facts was not credible and grossly misrepresents the evidence in this case." Credibility determinations are the province of the trial court. (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 823.) The trial court did not abuse its discretion in denying the request for $531,950.

C. Set Aside

The apparent aim of appellant's litigation efforts during the past decade has been the set aside of the January 4, 2005 dissolution judgment and the support obligations it imposed on him.[10] As the trial court summarized, the "stated bases for the request are that there was undue influence in that the

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[10]We note that it was the 1998 pendente lite order, not the January 4, 2005 judgment, that imposed on appellant support obligations of $11,375 per month. The January 4, 2005 judgment required him to pay $119 per month in child support, an amount that was later changed by stipulation to $120.

Respondent concealed and embezzled community assets which was not discovered by [appellant] until long after the judgment was entered." The trial court rejected these claims and denied his requests to "stop enforcement of the divorce."

Section 2122 allows the trial court to set aside a judgment, or any part or parts thereof, on any one of six statutory bases, namely, where the judgment was the result of (1) actual fraud, (2) perjury in connection with financial disclosures filed by the parties, (3) duress, (4) mental incapacity, (5) mutual or unilateral mistake (in the case of stipulated or uncontested judgments only), or (6) noncompliance with financial disclosure requirements as provided in section 2100 et seq. (§ 2122, subds. (a)-(f).) All of these statutory grounds for set aside have explicit time limits of one or two years after entry of the judgment or the date on which the complaining party discovered or should have discovered the problem. (See *ibid.*) "[T]he trial court's exercise of discretion in refusing to set aside a judgment under section 2122 is subject to reversal on appeal only if we find an abuse of that discretion." (*In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138.)

Appellant argues the trial court abused its discretion because respondent engaged in fraud and embezzlement in 1995-1998, aided and abetted by a perjurious declaration from her attorney, and filed a false income and expense declaration in 2004. As we explained above, the trial court found that appellant discovered or should have discovered the alleged malfeasance much earlier than he claimed. This alone supports the trial court's refusal to set aside the judgment under section 2122. Appellant also argues that the judgment is void because it was entered in violation of the automatic stay. The bankruptcy court repeatedly rejected that assertion and explained to appellant its

legal bases for doing so. The trial court did not abuse its discretion in implicitly rejecting that repeated claim.

Appellant further argues that the judgment should be set aside because he never had the ability to pay the support obligations it imposes on him. That is a claim appellant should have raised on a direct appeal of the judgment, which he did not pursue. In any event, appellant's children have both reached the age of majority during the pendency of the dissolution proceedings. Appellant also contends the judgment should be set aside because the court failed to suppress tape recordings of phone calls respondent made without his consent. It is unclear from his brief what evidence he is talking about or at which hearing(s) it should have been suppressed. The partial phone call transcripts in the record are from early 1997, before the proceedings even began. Additionally, an order dated April 14, 1998 expressly permits the parties to record their telephonic interactions without the consent of the other. We cannot conclude the court erred in declining to set aside the January 4, 2005 judgment on this basis.

D. Motion for New Trial

After the court denied his requests for order, appellant moved for a motion for new trial on the grounds that respondent had concealed and failed to produce documents, and that he had discovered new evidence in 2010 (six years before the motion). The court held a hearing on the motion and summarily denied it. Appellant requests that we reverse that order but does not make any independent arguments as to why we should do so.

Issues as to which an appellant provides no argument or discussion may be deemed forfeited. (*Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 108, fn. 9.) Even if

this issue were not forfeited, we would not conclude the court abused its discretion in denying the motion. (See *David v. Hernandez* (2014) 226 Cal.App.4th 578, 590.) The court previously rejected appellant's claims of newly discovered evidence and found his credibility regarding such evidence lacking. We found no abuse of discretion in those orders. Likewise, the court properly rejected appellant's contentions about respondent's alleged concealment of documents and other fraudulent activities. Other courts before it also rejected those arguments. Appellant failed to demonstrate an entitlement to new trial.

DISPOSITION

The orders of the trial court are affirmed. Respondent is awarded her costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

DUNNING, J. *

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* Retired Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.